cf 100/r

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 1763 /2002

PETITIONER : Sonalal Soni, S/o Late Shri Kishan Lal Soni, aged 58 years, Occupation- Photographer, R/o Mahamaya Ward, Mungeli.

-VERSUS-

RESPONDENTS

1. State of Chhattisgarh through Secretary of Home, D.K.S. Bhavan, Raipur.
2. Director General of Police, Chhattisgarh, Raipur.
3. Inspector General of Police, Bilaspur Range, Bilaspur.
4. Superintendent of Police, Bilaspur.
5. Station House Officer, Police Station Mungeli, District Bilaspur.

P.R. No. 1267/02
Received by Shri
dated 28.8.02

WRIT UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.

(3)

cf/108/

Amended as per Hon'ble Court order dtd 17.2.04 vide M.A. No. 17.2.04

Ajit Kumar Kujur 17.2.04

6. Akhilesh Singh Thakur, Aged about 19 years, son of Shri Mahendra Singh, resident of Kedukampa, Mungeli, Distt. Bilaspur (Chhattisgarh).

7. Anil alias Annu, aged about 25 years son of Shri Kishore Tamboli, resident of in front of Samudayeek Bhawan, Mungeli, Distt. Bilaspur (C.G.).

8. Vishnu Prasad Nayee, aged about 38 years so of Shri Sugreev Nayee, resident of Rawanbhatha, Mungeli, Distt. Bilaspur (Chhattisgarh).

Sl.No. 6 to 8 are at present in judicial custody at Central Jail, Bilaspur.

17/2/04

1) The respondent No. 6 to 8 are proper parties, as they are charged for offence punishable Section 302/34 of IPC hence they are impleaded as Respondents, though no relief is seught against them.

ERK

A.F.R.

(109)

19/3

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

Writ Petition No.1763 of 2002

Sonalal Soni

- Versus -

State of Chhattisgarh and others

ORDER FOR CONSIDERATION

Sd/-

HON'BLE SHRI JUSTICE V.K. SHRIVASTAVA

Sd//-
V.K.Shrivastava
Judge

POST FOR ORDER ON 18TH MARCH, 2005

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1763 of 2002

Sonalal Soni

- Versus -

State of Chhattisgarh and others

Present: -

Mr. P.K.C. Tiwari, Sr. Advocate with Mr. Sudhir Verma, Advocate: — For the petitioner.

Mr. P.K Verma, Addl. Advocate General: — For respondents No.1 to 5.

Mr. K.A. Ansari, Sr. Advocate with Mr. N.P. Kela, Advocate: — For respondents No.6 to 8.

DIVISION BENCH*: -
HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI V.K. SHRIVASTAVA, JJ.

O R D E R

(Passed on 18th March, 2005)

The following order of the Court was delivered by *L.C. Bhadoo, J.*: -

1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India being dissatisfied & aggrieved by unfair investigation conducted by respondent No.5 in Crime No.87/2002 registered at Police Station Mungeli in respect of murder of his son namely Somesh Kumar Soni.

2. Brief facts leading to filing of this writ petition are that the petitioner and his son Somesh Soni were engaged in the business of video shooting and photography. They were running the shop at Mungeli. The petitioner's son was also doing the business of running taxi. On 9.3.2002 main accused Akhilesh Singh Thakur engaged the taxi of Somesh Soni for the purpose of his marriage and he also engaged Somesh Soni for photography & videography. On that day in between 12.00 Noon and 1.00 p.m. when Somesh Kumar Soni demanded money for purchase of diesel for his taxi from accused Akhilesh Singh Thakur, that annoyed Akhilesh Singh and at that very moment, he took gun from his companion and fired a shot on

the head of Somesh Soni, as a result of which Somesh Soni died on the spot. Report of the incident was lodged by the petitioner herein at the Police Station Mungeli. The police after registering the case under Crime No.87/2002 took up the investigation, and after completion of investigation filed charge sheet on 10.6.2002 against Akhilesh Singh, Anil alias Annu and Vishnu Prasad Nai for commission of offence punishable under Section 302 read with Section 34 of the I.P.C.

3. The case of the petitioner is that after killing of his son, Akhilesh Singh and his associates, who were present on the spot, with a view to suppress the evidence created anarchy on the spot and compelled the shopkeepers of the shops situated around the place of incident, to close the shops and to ran away. The petitioner's further case is that at the time of incident Somesh Soni was covering the said ceremony through his video camera, whereas one of his associates was covering same through still photography and in the video shooting the incident has been recorded up to stage when Akhilesh Singh took the 12 bore gun and fired at Sumesh Soni. This information was given to the Investigating Officer, he collected the videocassette also but did not prepared the Panchnama for the same and same has not been tendered into evidence in the trial court during the proceedings. The petitioner's further case is that in connection with 14 other cases registered against Soni community relating to the incident happened after the murder of Sumesh Soni, the statements of the witnesses were recorded. Although these persons were eyewitnesses to the incident of murder of Sumesh Soni, but their statements have not been recorded in Crime No.87/02 relating to the murder of Sumesh Soni. Thereafter, the police instead of collecting the cogent evidence started harassing the family members of the petitioner by registering case against them, which alleged to have been taken place after the murder of Sumesh Soni. The petitioner sent various letters (Annexure P-2) to the respondents' authorities for not conducting fair investigation of the murder of Sumesh Soni, and for not collecting entire evidence available in connection with the murder of Sumesh Soni. Therefore, it has been prayed that entire record be called for and it be directed that investigation may be handed over to an independent agency

like CID or CBI or in the alternative the police may be directed to collect the entire evidence available on the record in connection with the murder of Sumesh Soni.

4. Return has been filed on behalf of the State in which it has been mentioned that it is incorrect to say that fair investigation has not been conducted in the matter and it has also been denied that witnesses to the incident have not been examined. It has further been mentioned in the return that videocassette in question has been taken into possession and same has been filed along with the charge sheet before the trial court.

5. Rejoinder to the petition has been filed on behalf of the petitioner in which it has been mentioned that it is evident from the statements of Sandeep Pandey & Hemant Gajpal, which was recorded in Crime No.88/02 registered at P.S. Mungeli, that they were the eyewitnesses to the incident, but even then their statements were not recorded in Crime No.87/2002. Apart from that five other persons namely Nilesh Soni, Yuvraj Swarnkar, Ramshankar Rathore, Sunil Rathore & Manoj Rathore were also eyewitnesses to the incident but police has not recorded their statements. Affidavits of these persons stating that they were the eyewitnesses of the incident are Annexures P-5 to P-9.

6. I have heard Mr. P.K.C. Tiwari, Sr. Advocate with Mr. Sudhir Verma, Advocate for the petitioner; Mr. P.K. Verma, Additional Advocate General for the State/respondents No.1 to 5; and Mr. K.A. Ansari, Sr. Advocate with Mr. N.P. Kela, Advocate for respondents No.6 to 8.

7. Learned counsel for the petitioner argued that the investigating officer had not recorded the evidence of above 07 persons in spite of request made by these persons, it is evident from the video recording that some of the persons, who were the eyewitnesses to the incident and appeared in the video cassettes also, even their statements were not recorded by the prosecution, therefore, a fair and impartial investigation was not conducted by the investigating agency. In the circumstances, the Court should direct the investigating agency to conduct the investigation from these

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witnesses and to include them in the list of witnesses, as they have not been examined and included in the list of witnesses.

8. On the other hand, learned Additional Advocate General for the State argued that it is not correct to say that the evidence of the eyewitnesses were not recorded and so far as the witnesses namely Nilesh Soni, Yuvraj Swarnkar, Ramshankar Rathore, Sunil Rathore & Manoj Rathore are concerned, last three witnesses are residents of Champa, there was no occasion for them to be remain present on the spot. These five persons have never approached the investigating officer for recording of their evidence. As far as Sandeep Pandey & Hemant Gajpal are concerned, even though there is reference in their statements recorded under Section 161 of Cr.P.C. in Crime No.88/02 that they were present in the Thakur Complex in a computer center situated near the place of incident and they have further stated that after exchange of some words between Sumesh Soni & Akhilesh Singh Thakur, Sumesh Soni died on account of bullet injury fired by Akhilesh Singh, but reading of these statements do not make it clear that they were eyewitnesses to the incident. Moreover, they have filed the affidavits on 5.1.2003, whereas the incident took place on 9.3.2002, therefore, the filing of affidavit after such a long gap makes their presence doubtful.

9. Mr. K.A. Ansari, learned Sr. Counsel for respondents No.6 to 8 argued that there is nothing on record which shows that either the petitioner or the witnesses made representation or approached the Investigating Officer disclosing that they were eyewitnesses of the incident and their statements should be recorded. He further submits that this writ petition has been filed only to delay the trial, as evidence of all the witnesses have already been recorded but on account of stay granted by this Court the trial is not proceeding.

10. However Mr. P.K. Verma, learned Additional Advocate General and Mr. K.A. Ansari, learned Senior Advocate submitted that so far as the recording of statement of Sandeep Pandey & Hemant Gajpal is concerned, they have no objection if the investigation is conducted from these persons regarding their witnessing the murder of Somesh Soni by accused persons.

11. Having heard learned counsel for the parties, we have perused the entire record. At this stage it would be profitable if we have a glance over the relevant provisions of the Code of Criminal Procedure, 1973, which deals with the power of investigation of Police, and also to have look into the law as laid down by the Hon'ble Apex Court. Section 2 (h) of Cr.P.C. defines that "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person who is authorized by a Magistrate in this behalf. Section 161 of Cr.P.C. falls under Chapter-XII, which deals with the information to the police and their powers to investigate. This Section envisages that competent police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case, whereas sub-section (3) of Section 161 of Cr.P.C. envisages that *"officer may reduce in writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records"*. Therefore, a statement by a witness to the police officer during investigation may be reduced into writing. However, it is not obligatory on the part of the police officer to record any statement made to him. He may do so if he feels it necessary. What is enjoined by the Section is a truthful disclosure by the person who is examined. Section 173 (8) of Cr.P.C. which falls under Chapter-XII envisages that *"nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."* Therefore, sub-section (8) of Section 173 of Cr.P.C. prescribes that the police officer is not precluded from conducting further investigation in respect of an offence even after the report under sub-section (2) has been forwarded to the Magistrate after completion of the evidence. As such, even after filing the charge

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sheet under the above provisions the police can further investigate into the matter. In this connection the Hon'ble Apex Court in the matter of **State of Haryana Vs. Bhajanlal** reported in **AIR 1994 Supreme Court 604** in paragraph No.62 observed that:

> "... investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is "legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code" and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as afore-mentioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted. "*But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution.*" Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy."

12. In the matter of **Om Prakash Narang and another Vs. State (Delhi Admn.)** reported in **AIR 1979 Supreme Court 1791** the Hon'ble Apex Court has held that "*further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to the light during the course of trial it may be cured by further investigation, if circumstances so permitted.* It would ordinarily be desirable and more so, in this case that police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real and actual offences found during course of proper investigation is as much relevant, desirable and necessary as

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an expeditious disposal of the matter by the Courts and if there is necessity for further investigation the same certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. In the matter of **Hasanbhai Valibhai Qureshi Vs. State of Gujarat and others** reported in **2004 AIR SCW 2063** while interpreting sub-section (8) of Section 173 of Cr.P.C. the Hon'ble Apex Court held that *"Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted.*

13. Therefore, in view of the provisions of sub-section (8) of Section 173 of Cr.P.C. and law laid down by the Hon'ble Apex Court in the above matters, it is clear that even after filing of charge sheet and taking cognizance of an offence by the Magistrate the police is not precluded from conducting further investigation provided where it has been found that investigation was defective and fresh facts come to the light, and some important aspects have been left out, which were not noticed at the time of investigation or the investigation officer has not conducted the investigation in a fair manner or deliberately or by mistake or knowingly has left out to collect the material evidence in the matter which is important and relevant with the concerned crime.

14. In view of above legal position and law laid down by the Hon'ble Apex Court, if this Court reaches to the conclusion that the investigating officer has failed to collect the material evidence and investigation was not fair and proper then definitely, this Court is entitled to invoke its extra ordinary jurisdiction under Article 226 of the Constitution of India, and a direction can be issued for further investigation. As has been held by the Hon'ble Apex Court in the matter of **Zahira Habibulla H. Sheikh and another Vs. State of Gujarat and others** reported in **2004 AIR SCW 2325**

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> *"it will not be correct to say that it is only the accused who must be fairly deal with. That would be turning Nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has a inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trail is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause forced to give false evidence that also would not result in a fair trial. The failure of hears material witnesses is certainly denial of fair trial."*

If we look into the facts of the present case, a bare perusal of the statements of Sandeep Pandey & Hemant Gajpal recorded under Section 161 of Cr.P.C. in Crime No.88/02 shows that they have clearly stated that at the time of incident both were sitting in the same complex in a computer center, where the incident happened, and they have further stated that after the murder of Sumesh Soni by accused Akhilesh Singh Thakur by a gun shot, the family members and other community members of deceased Sumesh Soni become furious and started creating *'Halla-gulla'* and breaking shops. Therefore, these persons were present on the spot. In the circumstances, the investigating officer ought to have examined them or conducted investigation from them about their witnessing the commission of murder of Sumesh Soni by Akhilesh Singh and others. At this stage, as argued by learned Additional Advocate General for the State we are not required to meticulously examine the merits and demerits of their evidence, simply we have to see whether they were present on the scene and if their presence is proved then the investigating officer was required to conduct investigation from them as per the provisions of Section 161 of Cr.P.C. and ought to have made a note in the case diary of the case, but there is nothing on record to show that investigation was conducted from these witnesses.

15. As far as the other five persons i.e. Nilesh Soni, Yuvraj Swarnkar, Ramshankar Rathore, Sunil Rathore & Manoj Rathore, who have filed their affidavits that they were present on the scene and they were not examined by the investigating officer is concerned, even

though objection has been raised by learned counsel for the accused persons and learned Additional Advocate General that they have filed the affidavits after ten months i.e. on 5.1.2003 and whereas the incident occurred on 9.3.2002, and this petition was filed on 28.8.2002, charge sheet was already filed on 10.6.2002, therefore, they were not the eyewitnesses to the incident and that last three witnesses are the residents of Champa therefore, they could not have witnessed the crime. In our considered opinion, again at this stage going to such minute detail and to examine the correctness of the stand taken by these witnesses is not required when they are claiming eyewitnesses, allegations in the petition has been levelled that the investigation was not conducted in a fair manner, witnesses were not examined and further case of the petitioner is that even when the incident took place the still photography & videography was on, photos were being taken through still photography and videography. The submission of learned counsel for the petitioner that persons who were visible in the videography, which was being videographed at the time of incident, the investigating officer ought to have conducted investigation from them cannot be said to be without basis because in the incident the best evidence available was the photographs and videography in which everything was being recorded. The investigating officer ought to have gone through the photographs and videography in order to ascertain the presence of eyewitnesses and should have examined those persons. In view of the above fact also we are of the opinion that the investigation cannot be said to be conducted in a fair and transparent manner. Therefore, the grievance raised by the petitioner in this writ petition requires serious consideration. Moreover, it is a very serious offence of murder where the investigating agency was required to investigate into the matter in an efficient, effective and fair manner. Therefore, when further investigation in any case is imperative, and in this case as Sandeep Pandey & Gajpal have to be examined and the investigating officer is further required to scan through the videography and photographs in order to find out eyewitnesses, then investigation from the above five persons can also be done. Of course, in order to ascertain correct position, the investigating officer can keep in mind the points raised by learned counsel for the State and learned counsel for accused persons, and should

investigate as to whether these persons had witnessed the crime or not. Looking to the facts and circumstances of the present case, it would not be fair and reasonable for us to reject the prayer of these witnesses on technical ground.

16. As mentioned in the petition, even the investigating agency failed to prepare seizure memo of the videocassette and even that videocassette has not been tendered into evidence. If it is so, then it will amount to failure to discharge its duty on the part of the prosecution.

17. Learned counsel for the accused persons relied upon the decision of the Hon'ble Apex Court in the matter of **Satyajit Banerjee and others Vs. State of W.B. and others** reported in **(2005) 1 Supreme Court Cases 115** and argued that on the basis of this decision the writ petition of the petitioner deserved to be dismissed. But in our opinion looking into the facts and circumstances of the case the above decision of the Hon'ble Apex Court is no help to the accused persons because in that case the Court was considering the situation after recording acquittal by the trial court after full trial. The Hon'ble Apex Court has held that in all the circumstances the High Court can ask for retrial and that can be done according to the established principles and direction for retrial should not be made in all or every cases where acquittal of accused is for want of adequate or reliable evidence and that can be ordered only in extra ordinary situation where the trial being found to be a farce and a mock trial.

18. In this case, trial is still pending, as after filing of this writ petition, this Court vide order dated 22.12.2002 ordered that *'trial may be continued but evidence shall not be closed until further orders'*. Therefore, in view of this order the trial is still pending and if further investigation is ordered in view of the provision of sub-section (8) of Section 173 of Cr.P.C. that is not going to cause serious prejudice to the accused persons.

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19. In the result, we are of the considered opinion that the writ petition of the petitioner deserves to be allowed and accordingly, it is allowed. The S.D.O. (P), Mungeli is directed to conduct further investigation from the aforesaid seven witnesses as to whether they witnessed the incident, and he is further directed to go through the video cassette and photos taken at the time of incident, and if any witness are left out to be examined then the investigating officer can also conduct investigation from them and after that investigation, to act according to the provisions of Sections 161 & 173 (8) of the Cr.P.C.

20. However, it is made clear that the order dated 22.12.2002 whereby the trial Court was directed that the evidence shall not be closed, shall continue till the filing of further report by Police under Section 173 (8) of the Cr.P.C. and thereafter the trial Court to proceed further with the trial in accordance with law, as the circumstance requires. It is also made clear that if the petitioner is not satisfied with the final result of investigation then he will not be precluded for moving an application under Section 311 of Cr.P.C. for consideration by trial Court and if such an application is filed then the trial Court shall decide the same in accordance with law regarding calling of witness under Section 311 of Cr.P.C.,

21. Before parting with the order we would like to observe that every now and then hue & cry is being raised by the victims of the crime or relatives of the victims that investigation is not being conducted by the Investigating Officer in a fair & transparent manner, the same is conducted keeping them in dark, without informing them about the progress of investigation, which is not fair and detrimental to them. Further that even victims of the crime and their relatives have not say in the prosecution of the case at the time of trial, Prosecutor is not listening to them and not informing them about the progress & preparation of the case, their participation in the trial or assistance to the Prosecutor is not allowed and sometimes dissatisfied with the performance of the Prosecutor the victims or their relatives are moving to the State Government for appointment of Prosecutor of their choice in order to prosecute the trial with due diligence and with a required standard. It is true that

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in the Criminal Justice System of India the complainant, victims of the crime and relatives of the victims have no free hand at the stage of investigation or at the stage of trial, but in the recent times, the Indian Courts as well as the Indian legislatures have tried to make the procedural rules of Criminal Justice System more victims friendly specially in relation to crimes against women and weaker sections of society. For instance, in cases of rape and also in the cases of delay in filing complaint is understandable and will not undermine the credibility of the complaint and evidence of the prosecutrix does not require any corroboration. Section 114-A was inserted in the Evidence Act to create a statutory presumption against consent, thereby casting the burden on the defendant in a trial to prove consent. In the year 1996 in one case the Supreme Court lamented that even after the statutory amendment and "------- *- inspite of the decision of the Supreme Court that..... Corroboration of the prosecutrix was not necessary, the cases continue to end in acquittal on account of mishandling of the crime by the police and the invocation of the theory of "consent" by the courts who tried the offence of rape.....*". Once again, the Court emphasized the need to allay fear from the minds of women so that they participate in the system without a "fear psychosis'. It is not out of place to mention here that on account of defective, unfair and investigation by incompetent officer the large number of cases are resulting in acquittals and the rate of conviction by the Indian Courts is not more than 8%, whereas in Singapore the Criminal Laws are almost similar to Indian Laws but even then the rate of conviction in Singapore is more than 90%. It is not like that all false cases are being foisted on the accused persons that is why the cases are resulting in acquittals, but the factors for such acquittals are the lack of competency of the investigating agency, not conducting investigation in a scientific manner, not collecting the clinching circumstantial evidence and wholly depending upon the evidence of eyewitnesses which is always a very dangerous thing, for the reason that if interested persons, who wants conviction by any means, are introduced as prosecution witnesses then that cannot be said to be a fair trial and if independent witnesses are introduced as per normal most of the independent witnesses are turning hostile on account of their disinterest in the prosecution or due to fear of the

accused or some other reasons. Therefore, the best evidence can be collected through scientific method of investigation and clinching circumstantial evidence. It is rightly said that a man can tell lie but the circumstances cannot. Moreover, investigating officers and prosecutors are not allowing the victims or their relatives to assist them to the extent of desired level, not informing them about the progress in the investigation and trial, even the witnesses are not being protected and handled properly are the areas where the State or the Legislature should take appropriate steps for fair investigation and trial.

In the President's Task Force on Victims of Crime – Final Report (December 1982) it was said that " *somewhere along the way the system apparently lost track of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it. Somewhere along the way, the system began to serve lawyers and judges and defendants treating the victim with institutionalized disinterest.* So far the Criminal Justice System is concerned, for the rights of an accused led to the creation of a structure in which the two principal actors were the State and the accused – the victim stood distanced from the entire Criminal Justice System for some time. The system is focused upon the rights of the accused rather than rights of victim. The United States realizing this difficulty passed the Victims and Witness Protection Act of 1982, which contains the provisions for restitution to crime victims and the inclusion of a Victim Impact Statement as a pre-sentence report. Then again after two years, the Victims of Crime Act, 1984 was enacted. Despite this, the Courts held that victims do not have any standing to challenge even the orders of Court under the Victims and Witnesses Protection Act. Then again the Victims Rights Classification Act, 1997 was enacted which provides that the District Court (Federal) shall not exclude a victim from the trial merely because he may at a later point of time offer a Victim Impact Statement. At the time of signing this statute the President Clinton is reported to have said that "*.....the victim should be at the center of the criminal justice process, not on the outside looking in...*". That the declaration of basic Principles of Justice for Victims of Crime and Abuse of Power recognizes that

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"..... victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.... Judicial and administrative mechanism should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms."

In Australian law, the Victim of Crime Act, 1994 has made comprehensive provisions for securing the rights of the Victims of Crime. Section 4 of the Act lays down "Governing principles" stipulates that "..... *In the administration of justice, the following principles shall, as far as practicable and appropriate, govern the treatment of victims:-*

"(a).....

(b) a victim should be informed at reasonable intervals (generally not exceeding 1 month) of the progress of police investigation concerning the relevant offence, except where such disclosure might jeopardize the investigation, and, in that case, the victim should be informed accordingly;

(c) a victim should be informed of the charges laid against the accused and of any modification of the charges;

(d) a victim should be informed of any decision concerning the accused to accept a plea of guilty to a lesser charge or a guilty plea in return for a recommendation of leniency in sentencing;

(e) a victim should be informed of any decision not to proceed with a charge against the accused:

(f).....

(g) a victim should be informed about the trial process and of the rights and responsibilities of witnesses:

(h).....

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(i) a victim should be relieved from appearing at preliminary hearings or committal proceedings unless the court directs otherwise;"

Therefore, it is high time that the Legislature should take into account the rate of acquittals in Indian Courts and to ensure the participation of the victims or their relatives at the investigation stage or at the trial stage. It is true that sometime if the free hand given to the victims or relatives of the victims to have say in the investigation and the trial, then sometimes they may try to dictate their terms in order to ensure conviction of a person even he is not involved in the crime, but that is for the investigation officer and for the prosecutor to assess the situation and to allow the participation of the victims or their relatives to the desired level, but on this ground their participation in the investigation and trial cannot be blocked and doors cannot be shut. Atleast, the Legislature can consider that the victim or the relatives of the victim should be informed about the progress of the police investigation concerning the relevant offence, except where such disclosure might jeopardize the investigation, the victim should be informed of the charges laid against the accused and of any modification of the charges, he should be informed about the progress of the investigation, evidence collected, at the trial stage he should be informed about the progress of the trial, about the result of investigation and trial with reasonable intervals. The Investigation Officer and Prosecutor should remain in touch with them as and when their assistance or any information is required from them. Without allowing such a participation of the victims and relatives of the victims to our mind nothing is going to improve the Criminal Justice System which is being criticized by every now and then.

Sd/-
L.C. Bhado
Judge

sd//-
V.K.Shrivastava
Judge

Roshan/-